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LaJuana Wilcher Sworn in as Environmental and Public Protection Cabinet Secretary

On Dec. 22, 2003 LaJuana S. Wilcher was sworn in as Kentucky's secretary of the newly formed Environmental and Public Protection Cabinet.

LaJuana Wilcher is a biologist and environmental lawyer with almost three decades of experience in environmental and natural resources issues. She began her career with the U.S. National Park Service and was Assistant Administrator for Water at the U.S. Environmental Protection Agency (EPA).

During Wilcher's time in Washington D.C., she managed EPA's national water programs, including planning, policy and program management for the nation's drinking water, waste water, ground water, oceans and estuaries. Ms. Wilcher was also responsible for EPA's wetlands program, managed EPA's negotiations on the \$1.1 billion Exxon Valdez oil spill settlement, and led U.S. delegations to international water conferences and events.

Secretary Wilcher was with the English, Lucas, Priest and Owsley law firm in Bowling Green. Her practice advised companies, municipalities, small businesses and not-for-profit organizations on a wide range of environmental and natural resource issues. She has also been an adjunct professor of environmental law at the Vermont Law School. Additionally, she has served as a special assistant to the general counsel at the U.S. Department of Agriculture, and as a naturalist for the U.S. National Park Service at Mammoth Cave National Park.

For an overview of the newly formed Environmental and Public Protection Cabinet see page 2 [Kentucky Natural Resource and Environmental Cabinet Reorganized](#).

Lindell Ormsbee Elected Chair of EQC

Dr. Lindell Ormsbee was elected as chair of the Environmental Quality Commission at the annual meeting of the commission on Dec. 18, 2003. Ormsbee succeeds Aloma Dew, whose term expired. Ms. Dew served as Chair of EQC for the past 10 years. Dr. Ormsbee was appointed to the commission in 2003. A resident of Lexington, Ormsbee is the Raymond-Blythe endowed professor of civil engineering at the University of Kentucky and currently serves as associate director of the Kentucky Water Resources Research Institute. He is past president of the Bluegrass Chapter and the Kentucky Section of the American Society of Civil Engineers. In addition to being a licensed professional engineer, he is only one of two certified professional hydrologists in Kentucky.

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EQC Commissioners:

Lindell Ormsbee, *Chair*
Lexington
Betsy Bennett, *Vice-Chair*
Louisville
Aloma Dew, *Owensboro*
Patty Wallace, *Louisa*
Gary Revlett, *Shelbyville*
Gordon Garner, *Prospect*

EQC Staff:

Leslie Cole, *Executive Director*
leslie.cole@ky.gov
Erik Siegel
erik.siegel@ky.gov
Frances Kirchhoff,
frances.kirchhoff@ky.gov

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2004 Legislative Session Convenes

The 2004 session of the Kentucky General Assembly began on Jan. 6. Legislators filed 240 bills on the first day of the 60-day session. Environmental bills filed range from action on smoking bans to tax credits for biodiesel. The budget will receive considerable attention during the session. The General Fund budget enacted for Fiscal Year 2004 is projected to be \$302.6 million short of previously authorized spending levels and the Road Fund budget is projected to fall short by \$16.6 million.

Legislative Bills Filed as of 1/7/04

SB 3. Tax credit for biodiesel.	HB 121. Prevent prohibitions of tobacco use.
SB 10. Smoking policies and who can set them.	HB 127. Creation of a Pest Plant Board.
SB 11. Restrict blasting operations in an urban-county.	HB 132. Buildings, mold and toxins, task force and inspections.
SB 33. Land use, alternative dispute resolution.	HJR 12. Elimination of vehicle emissions testing.
HB 53. Vehicle emission testing programs, exempt cars 4 years and newer.	HCR 8. Creation of the Lexington/Big Sandy Rail Trail task force.

Kentucky General Assembly 2004 - useful information

Legislative record online - <http://www.lrc.state.ky.us/record/04rs/record.htm>

Toll-free lines - **Bill Status Line** 1-866-301-9004 **Legislative Message Line** 1-800-372-7181

Calendar (Meetings) Line 1-800-633-9650 **Citizen Contact Line** 1-800-592-4399

Kentucky Natural Resources and Environmental Protection Cabinet Reorganized

On December 23, 2003, Gov. Ernie Fletcher signed an executive order authorizing the reorganization of state government. The executive order puts into effect recommendations proposed by the Governor's Blue Ribbon Commission on Governmental Organization and Efficiency. The Governor is reducing the number of cabinets from 14 to 8 by combining some cabinets and creating new ones. The new cabinets are: Environmental and Public Protection, Transportation, Justice and Public Safety, Finance and Administration, Education, Health and Family Services, Economic Development and Commerce.

The former Natural Resources and Environmental Protection (NREPC) has now become the Environmental and Public Protection Cabinet (EPPC) which is a combination of NREPC, the Labor Cabinet and the Public Protection and Regulation Cabinet. Some of the changes to the former programs include:

- ◆ Abolishing the Department for Surface Mining Reclamation and Enforcement and the Department for Mines and Minerals and moving those divisions to the Department for Natural Resources.
- ◆ Abolishing the Office of the Petroleum Storage Tank Environmental Assurance Fund and transferring those functions to the Division of Waste Management.

For more information see the cabinet's Web site at www.environment.ky.gov

Kentucky Unveils Mine Mapping Internet Site

The initial phase of a project that began in the aftermath of the 2000 Martin County coal slurry spill and that is designed to improve mining safety is now online. The Kentucky Mine Mapping Information System will make an extensive collection of site maps of abandoned and active mines available via the Internet. The current site includes area representation of all known historic mining activity and the engineering drawings for mines active during 2002. Over the next several years the project will expand to include scanned engineering drawings for every mine in Kentucky. The web site is <http://minemaps.ky.gov> or contact Scott Render at (502)564-8747.

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CONFERENCE CALENDAR

Jan. 15 - Kentucky Biodiesel Showcase. Frankfort - Capital Plaza Holiday Inn. Conference and exhibit showcasing Biodiesel in Kentucky. Contact Melissa Howell at (502) 452-9152, e-mail KCFC@aol.com, or Web site www.kentuckycleanfuels.org

Jan. 31 - Registration Deadline for Kentucky Envirothon. Kentucky's competitive problem-solving event for students in grades 9-12 will focus on the Urban Environment. Teams of five students are formed in a school and state winners compete nationally for \$25,000 in scholarships. Sign up now with your local conservation district or visit www.envirothon.org.

Feb. 17-18, 2004 - 2nd Annual Kentucky Environmental Conference. Lexington - Marriott Griffin Gate. Information on Kentucky and federal environmental policies and regulations, as well as information on new environmental compliance mandates. Contact: Connie Curran at (502)695-4700 x 3026 or e-mail ccurran@kychamber.com

March 18-19 - 13th Annual Business and Industry's Environmental, Health and Safety Symposium. Cincinnati Convention Center - includes concurrent and interactive workshops on water and air topics. See Web site www.MECseminars.com or call (614) 229-7990.

PUBLIC NOTICES/HEARINGS - PERMITS

This listing is not official. Contact the various divisions listed for more information about these and other permits.

Kentucky Division of Water - Water Discharge Permits/Public Notices

Contact Ann Workman, (502) 564-3410. See <http://www.water.ky.gov/publicassistance/notices/>

- Builders Concrete**, Richmond, Madison Co. KPDES No. KY0105171. A new discharge of concrete mixer truck washout wastewater enters Taylor Fork at mile point 5.5.
- Chas Coal LLC. - Gardner Preparation Plant**, Beverly, Clay Co. KPDES No. KY0049140. An existing source discharge of mine drainage enters Red Bird Creek in Clay County.
- IMI South LLC, Cythiana** KPDES No. KY0105198. A new discharge of concrete mixer truck washout wastewater enters the South Fork of the Licking River.
- Kentucky Solite Corp.**, Brooks, Bullitt Co. KPDES No. KY0101711. An existing source discharge of non-contact cooling water and storm water runoff from a lightweight aggregate that enters Blue Lick Creek.
- Matsushita Home Appliance Co.**, Danville, Boyle Co. KPDES No. KY0001139. An existing discharge of storm water runoff from a plastic vacuum parts manufacturer enters an unnamed tributary.
- McAlpine Lock and Dam**, Louisville, Jefferson Co. KPDES No. KY0105163. A new discharge of concrete mixer truck washout wastewater enters a drainage ditch to the Ohio River.
- T and T Coal, Inc. - Laurel Fork Mine** Annville, Jackson Co. KPDES No. KY0102075. A new source discharge of mine drainage from a surface coal mine that enters Laurel Fork in Jackson County.

Kentucky Division of Waste Management -Hazardous Waste Notices

Contact Mike Welch, (502) 564-6716. See <http://www.waste.ky.gov/news/default.htm>

- Paducah Gaseous Diffusion Plant**, McCracken Co.- Request for Variance of Land Disposal Restrictions. The public hearing Tuesday, January 20, 2004, 7 p.m., Heath High School, 4330 Metropolis Lake Road, West Paducah.
- Hallmack Facility**, Harrodsburg, Mercer Co. -Tentative approval of a permit modification request to modify the RCRA post-closure permit for a closed hazardous waste landfill at the former Hallmack facility.
- LWD, Calvert City, Ky.** -Final determination to terminate LWD's interim status and ordered LWD to begin closure.
- Safety-Kleen**, Lexington, Fayette Co. - Permit modification to Part A, Waste Analysis and Contingency Plan.
- Rohm and Hass**, Louisville, Jefferson Co. - Notification of Minor Modification to hazardous Waste permit.

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PUBLIC NOTICES/HEARINGS - PERMITS

This listing is not official. Contact the various divisions for more information about these and other permits open for public comment.

Kentucky Division of Waste Management - Underground Storage Tank Notices

Contact: Christopher Luffy, (502) 564-6716 ext. 253.

- Shell Service Station, 7681 Burlington Pike, Florence - Technical review of a Corrective Action Plan.
- Boone Inn, Walton - Approval of the Corrective Action Plan.

Kentucky Division for Air Quality Permit Notices

Contact: George Day, (502) 573-3382 or see http://www.air.ky.gov/homepage_repository/Public+Hearings.htm
Significant Revision at Title V Source

- American Fuji Seal Inc., Bardstown, Nelson Co.
 - Calgon Carbon Corp., Cattlettsburg, Boyd Co.
- Synthetic Minor Construction/Operating Permit at a Title V Source (restricts operations so PSD does not apply)
- American Fuji Seal Inc., Bardstown, Nelson Co.

Renew Title 5 Permit

- Jim Beam Brands Co., Frankfort, Franklin Co.
- Austin, Nichols and Co. Inc., Lawrenceburg, Anderson Co.

Title V Operating Permit

- Daramic Inc., Owensboro, Daviess Co.
- Kentucky Hydrocarbon Co., Langly, Floyd Co.
- Kentucky Utilities Co., Burgin, Mercer Co.
- Markwest Hydrocarbon Inc., Langley, Floyd

Title V Construction/Operating Permit

- Superior Graphite, Hopkinsville, Christian Co.
- Recmix of Pa. Inc., Ghent, Carroll Co.
- Holley Performance Products, Bowling Green, Warren Co.

Conditional Major Source Construction/Operating Permit (restricts operations so Title V does not apply)

- Sun Manufacturing, Willamstown, Grant Co.

Renew Conditional Major Permit

- Sun Manufacturing, Willamstown, Grant
- United L-N Glass, Versailles, Woodford Co.

Prevention of Significant Deterioration (PSD) Construction/Operating Permit

- Superior Graphite, Hopkinsville, Christian Co.
- Recmix of Pa. Inc., Ghent, Carroll Co.

Significant Permit Revision at a Conditional Major Source (restricts operation so that Title V does not apply)

- Western Ky. University, Bowling Green, Warren Co.

Kentucky Electric Generation and Transmission Board - Siting Applications and Actions

See http://psc.ky.gov/agencies/psc/siting_board/merchant.htm

Thoroughbred Generating Co., Central City, Muhlenburg Co.- Approval of permit to construct a 1,500 megawatt electric power plant on 4,100 acres of old or reclaimed coal mine lands. The plant would burn coal mined at the site. Permit will not take effect unless the plant obtains interconnection agreements with neighboring utility companies. The Siting Board considered impacts to available air emission allowances, making it difficult to build other industrial facilities but noted that such concerns are speculative. Other impacts considered included visual and noise impacts, additional traffic and impacts to nearby properties, including property values. Those factors were found to be either negligible or readily mitigated.

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PROPOSED STATE REGULATIONS

Waste Management

401 KAR 100.030. Voluntary Remediation (also known as the Brownfield regulation). New regulation that establishes a framework for all voluntary cleanups (brownfield and otherwise) addressed by KRS 224.01-400, 224.01-405, 224.01-450 to 224.01-465, and 224.01-510 to 224.01-532. This includes sites that receive a Notice of Completion letter, a No Further Remediation letter, or a Covenant Not to Sue (CNTS). Major provisions include:

Screening Values. U.S. EPA Region 9 Preliminary Remediation Goals (PRGs) are used as screening levels for all sites. The regulation also acknowledges their use as screening levels to screen out sites that otherwise do not require action under 224.01-400 and for sites that do not require cabinet oversight. If a site does require cabinet oversight, the regulation requires evaluation of chemical interactions including additivity, identification of Applicable or Relevant and Appropriate Requirements (ARARs), ambient background levels when demonstrating compliance with the remedial options. The regulation also identifies how the Region 9 PRGs may be used to establish the final cleanup levels for contaminants based on site-specific conditions.

Target Risk in Corrective Action Options. A cumulative Target Risk level of 1×10^{-6} and a Hazard Index of 1.0 for unrestricted use are set as endpoints for No Action Necessary. The Target Risk levels are set as goals for Management in Place. The party or applicant must demonstrate that the remedy is appropriate in light of eight criteria when the remedy will not achieve the Target Risk level at the point of exposure. In applying these eight criteria, an emphasis is placed on protection of human health and the environment, compliance with ARARs, long-term effectiveness and permanence, and reduction of toxicity, mobility or volume of the contamination.

Background. For No Action Necessary, ambient background is considered primarily inorganic in nature, but allows for a demonstration for cases where organic constituents are naturally occurring or not attributable to releases on the property. Statistical procedures are provided to assist in comparing sites to background. Background comparison can be based on generic statewide values in the guidance document or based on site-specific background samples.

Ecological Assessment. Ecological evaluation is based on two U.S. EPA guidance documents. An eight-step process for ecological evaluations includes decision points throughout the steps and involves stakeholders and decision makers. It allows for a tiered approach, including screening ecological assessments.

To view see <http://www.waste.ky.gov/programs/sf/VERP+Forms++Applications+and+Regulations.htm> or contact Herb Petitjean at (502) 564-6716 or e-mail Herb.Petitjean@ky.gov.

PUBLICATIONS/WEB SITES OF INTEREST

Mountaintop Coal Mining Environmental Impact Statement - comment period extended to Jan. 26, 2004. The public is invited to provide written comments during the extended comment period. Send comments to John Forren, U.S. EPA (3EA30), 1650 Arch Street, Philadelphia, PA 19103. Comments may also now be e-mailed to EPA at: mountaintop.r3@epa.gov to view the EIS see <http://www.epa.gov/region3/mtntop/index.htm>

GRANTS/FUNDING OPPORTUNITIES

Species Recovery Funds - Encourages habitat restoration, species reintroduction, private land conservation activities and other creative endeavors to improve conditions for endangered species. Grants range from \$3,000 to \$7,000. Visit www.nwf.org/keepthewildalive/speciesrecoveryfund.cfm or call Colleen Fahey at (202)797-6621 e-mail: fahey@nwf.org

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EQC ACTIVITIES

EQC Expresses Concern Regarding Surface Mining and Antidegradation Rule *Public Road Provision Rule Needs More Input*

The Environmental Quality Commission expressed concern to Gov. Fletcher regarding the proposed amendments pertaining to public roads and residences affected by coal mining operations. The amendments to 405 KAR 7:001, 8:001, 10:001, 12:001, 16:001, 18:001, 20:001, 24:001 seek to clarify the definition of a "affected area" as it relates to roads. The proposed amendments delete a three-prong test to determine if a road used to access or haul coal to or from a surface mining or reclamation operation is considered part of an affected area and should be permitted and bonded in connection with an operation. The proposed amendments would abolish this test and exclude a road from the affected area if the road is a state, county or public road and the road is in existence as of the date of the application. EQC expressed concern with the proposed change and recommended that protecting families who live along public roads that are legitimately affected by coal mining operations needs to be more fully addressed in the amended regulations. The commission suggested that the state seek additional input from various interests in order to develop language that provides an opportunity for those aggrieved parties to seek resolution of problems associated with the use of public roads for coal mine operations.

Antidegradation Exemptions in Proposed State Rule Not Supported by Evidence

The commission also rejected the Division for Water Quality's proposed antidegradation regulation on the grounds that justification for the various exemptions/variances to Kentucky's antidegradation policy were not supported by evidence and may not meet the requirements of the Clean Water Act. These include storm water discharges, coal mining discharges subject to the Surface Mining Reclamation and Control Act, domestic sewage discharges from single-family residences, concentrated animal feeding operations, publicly owned treatment works and KPDES permit renewals that result in less than a 20 percent increase in pollutant loadings from the previously permitted loading. EQC cited an Aug. 29, 2003 ruling by the United States District Court for the Southern District of West Virginia that stated "EPA acted arbitrarily and capriciously in approving West Virginia's antidegradation procedures" and that "EPA failed to ensure, in a number of respects, that West Virginia's antidegradation implementation procedures were consistent with minimum federal requirements." The plaintiffs had argued that the policy allowed too many exemptions and loopholes to be consistent with the requirements of the Clean Water Act. The ruling has placed the burden of proof on the delegated permitting authority to demonstrate discharges that degrade water quality are necessary.

To view the recommendations visit the EQC Web site at www.eqc.ky.gov

Celebrate Earth Day with EQC

Do you know people who are working hard to protect the environment? You could help them win some recognition for their efforts. The Kentucky Environmental Quality Commission (EQC) is now accepting nominations for its annual Earth Day 2004 awards.

The awards recognize Kentuckians for their outstanding commitment and service in protecting the environment. Any group or individual can be nominated for the honor. To submit a nomination, send the nominee's name, address, phone number and a one-page summary of the nominee's efforts to the Environmental Quality Commission, 14 Reilly Road, Frankfort, KY 40601. The EQC will honor its award winners during a ceremony in Frankfort on April 22 to celebrate the 34th anniversary of Earth Day. You can also submit a nomination electronically by visiting the EQC Web site at www.eqc.ky.gov The deadline for nominations is March 1, 2004.



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Environmental Quality Commission Public Meeting

Thursday, January 15, 2004
Conference Room 2 A and B
Department for Environmental Protection
14 Reilly Road, Frankfort

- | | |
|------------------|---|
| 1 p.m. | Open Meeting |
| 1:15 p.m. | Proposed Regulation Review |
| | <ul style="list-style-type: none"> • Waste - Environmental Performance Standards • Air - Open Burning • Water - Facility Construction • Waste - Brownfields |
| 2 p.m. | Discussion and Finalization of EQC 2004 Priorities |
| 2:30 p.m. | Other Business |
| 3 p.m. | Adjourn |

Visit the EQC Web site at www.eqc.ky.gov for agenda updates. The public is encouraged to EQC meetings and ask questions or offer comments. All EQC meetings are free and open to the public. Meeting facilities are accessible to people with disabilities. Auxiliary aids, interpreters and other services will be provided upon request by contacting EQC.



Patty Wallace accepts the Spirit of the River Award on behalf of EQC from KWA President Mary Kathryn Dickerson.

EQC Receives Spirit of the River Award

The 2003 Kentucky Waterways Alliance (KWA) *Spirit of the River Award* was presented to the Environmental Quality Commission for its "long dedication to protecting all of Kentucky's waterways and educating public policy makers and the general public, on water resources and threats. Their ongoing efforts have provided a voice for the Spirit of the River."

The award citation continues, "The Kentucky Waterways Alliance was formed ten years ago in response to a need for a statewide water group who would help local water groups across the state. It was a series of meetings across the state sponsored by the Environmental Quality Commission that documented this need and led to the formation of KWA. In this, KWA's 10th year, it is fitting that we honor our roots, the EQC, as a long-term and effective voice for clean water in Kentucky."

The Environmental Quality Commission is a seven-member citizen board that advises officials on environmental matters, provides a public forum for the discussion of issues and monitors environmental conditions. The Environmental Quality Commission welcomes your input.

Telephone (502)564-2150 ext. 160

E-mail EQC@ky.gov

Web site www.eqc.ky.gov

Address - Environmental Quality Commission

14 Reilly Road., Frankfort, KY 40601